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**Subject:** OCSPP News for January 7

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### Friendlier Congress awaits Biden after Democrats win Senate runoff elections

Terry Hyland, Chemical Watch

Voters in the state of Georgia have elected two Democrats to the US Senate in late runoff elections, giving the president-elect's party control of Congress and likely easing the path for the confirmation of Joe Biden's nominees for the EPA, the Consumer Product Safety Commission (CPSC) and other federal agencies.

Democratic control of Congress gives the incoming president a stronger hand to enact his environmental agenda, including action to address per- and polyfluoroalkyl substances (PFASs) contamination. It also boosts the prospects for legislation that enjoyed Democratic support in the previous session of Congress, including bills to ban the manufacture of asbestos and measures to further restrict PFASs.

Steve Owens, a partner with law firm Squire Patton Boggs and former EPA assistant administrator for the Office of Chemical Safety & Pollution Prevention (OCSPP), said the EPA could see greater scrutiny from the Senate on its implementation of TSCA. If Democrats see that things are not being done fast enough or the way they envision TSCA should be carried out, Mr Owens said, "there are opportunities for them to make their views known" through their oversight authority.

Democrats already held a slim majority in the House of Representatives. And after Jon Ossoff and Reverend Raphael Warnock won the two runoff elections on 5 January, the party is poised to pull to an even 50-50 split with Republicans in the Senate. With the incoming Vice President Kamala Harris breaking any tie votes in the chamber, Democrats will assume control of the Senate and its legislative action.

#### Senate confirmation

One of the first environmental business items – after Mr Biden is sworn in as president on 20 January – will be for the Senate to confirm Michael Regan to the post of EPA administrator.

"I intend to work with the next [Senate] majority and the minority leader to move forward with key cabinet nominations even while the Georgia results are confirmed," the president-elect said in a statement on 6 January.

Mr Biden is also likely to have an easier time confirming whomever he eventually appoints to run the EPA's OCSPP, which implements TSCA. The top role was vacant for the first two years of the Trump administration before Alexandra Dunn ultimately assumed the position.

The incoming president will also have a chance to shift the balance of power at the CPSC, currently balanced at two Republicans and two Democrats, with one vacant seat. The commission addresses the issue of risks in more than 15,000 consumer products and has the power to ban or recall products from the US market and set safety standards.

The CPSC's fifth seat has remained open for months, after the Republican-led Senate declined to vote to confirm Nancy Beck, who faced opposition from Democrats and Republicans after President Trump nominated her last March as chair.

In addition to filling the open seat, Mr Biden will be able to do so for the two current Democratic spots, which are due to be vacated later this year.

#### Legislation

While Congress is not expected to make significant changes to TSCA, some bills could eventually work their way through both the House and Senate.

The Alan Reinstein Ban Asbestos Now Act is one piece of legislation that will emerge with a good chance of passing both chambers, Mr Owens said. That bill, which passed a House committee in late 2019 before getting bogged down over late changes to its text, would prohibit the manufacture, processing and distribution of asbestos and asbestos-containing mixtures and articles.

Potential restrictions on PFASs could also see action in the House and Senate.

Last summer, House Democrats approved defence legislation that would have blocked the Department of Defense from purchasing a variety of products containing per- and polyfluoroalkyl substances (PFASs). Those restrictions were eventually trimmed down in a compromise bill that bans perfluorooctane sulfonate (PFOS) and perfluorooctanoic acid (PFOA) in...

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### **EPA reopens reporting for TSCA 'active-inactive' inventory rule**

NA, Chemical Watch

<https://chemicalwatch.com/199122/epa-reopens-reporting-for-tsca-active-inactive-inventory-rule>

The US EPA has said it will reopen the TSCA "active-inactive" inventory notification reporting period to give businesses an extra 60 days to correct any reporting errors relating to confidential business information (CBI) claims and substantiations.

Under the rule, companies identified chemicals that were manufactured, imported or processed in the US during a ten-year "look-back" period ending on 21 June 2016. The reporting period closed in October 2018. The EPA used the retrospective reporting to designate substances on the inventory as active or inactive.

In May 2020, the EPA released an interim list of chemicals expected to lose their CBI status and become part of the public TSCA inventory.

Since that time, the agency said it had become aware that there was "submitter confusion" about the active-inactive rule requirements during the initial reporting period, as well as a lack of coordination between companies, suppliers and customers, and mistakes in CBI claims.

These issues "may have inadvertently undermined existing, potentially valid, CBI claims for chemical identity", the agency said in a notice of the reopened reporting period released on 5 January.

The action gives companies an extra 60-day period to submit, amend or withdraw filings under the active-inactive rule to maintain existing CBI claims for chemical identity.

The extra 60-day reporting period will begin 30 days after the notice is officially published in the Federal Register.

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### **Washington state orders phthalate information from vinyl flooring makers**

Terry Hyland, Chemical Watch

<https://chemicalwatch.com/198915/washington-state-orders-phthalate-information-from-vinyl-flooring-makers>

Washington state's Department of Ecology (ECY) is ordering vinyl flooring manufacturers to provide information on any intentional use of certain phthalates in their products and how much flooring, if any, is produced using the substances.

The move comes as the department works to determine whether regulatory action is needed to limit the use of phthalates in vinyl flooring products, it said in guidance issued on 29 December.

Vinyl flooring containing intentionally added phthalates was one of 11 priority consumer products the ECY listed in July 2020 for evaluation and potential regulatory action under the state's Safer Products for Washington programme. Exposure to the substances is associated with endocrine disruption, impaired reproduction and prenatal development, neurodevelopmental impacts and potentially asthma, the July report said.

The vinyl flooring industry has asked for the products to be removed from the list, saying in public comments that they no longer use ortho-phthalates in them, the ECY said in the guidance. But it said it has not yet identified data to support this step and is seeking greater understanding of the use of the substances in products on the market.

The order from the ECY requires manufacturers to provide information on:

any intentional use of ortho-phthalates in vinyl flooring products; and  
an estimation of the square yards of the products that contain intentionally added ortho-phthalates sold in Washington. Ortho-phthalates are one of the class commonly referred to as simply phthalates. The ECY provided a table of eight of these used in flooring:

- dibutyl phthalate (DBP)
- diisobutyl phthalate (DIBP)
- di-n-pentyl phthalate (DPENP)
- di-n-hexyl phthalate (DHEXP)
- dicyclohexyl phthalate (DCHP)
- di(2-ethylhexyl) phthalate (DEHP)
- benzyl butyl phthalate (BBP); and
- 1,2-benzenedicarboxylic acid, 1,2-diisononyl (DINP)

In addition to the mandatory data, manufacturers can also provide optional information, including evidence to demonstrate their products do not contain intentionally added phthalates, use of any alternative plasticisers and the most recent date that products containing phthalates were manufactured.

The ECY included an Excel template to submit the information. The guidance did not set a specific deadline for this, but the department's Safer Products for Washington webpage indicates that "manufacturers have six months to collect and submit the information".

#### Requesting CBI

The ECY also released guidance for businesses seeking any portion of their submissions under the Safer Products for Washington programme to be treated as confidential business information (CBI).

Such a request "must offer convincing evidence" that the criteria set out in state law (RCW 43.21A.160) have been met. This includes that the information:

"relate[s] to the processes of production unique to the owner or operator thereof"; or that it  
"may affect adversely the competitive position of such owner or operator if released to the public or to a competitor".  
The department also laid out how it will handle the CBI process and the steps for submission and review of the claims.  
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#### **Asbestos: Federal Court Closes EPA Reporting Loophole**

Lisa Whitley Coleman, EHS Daily Advisor

<https://ehsdailyadvisor.blr.com/2021/01/asbestos-federal-court-closes-epa-reporting-loophole/>

On December 22, 2020, the federal district court in the northern district of California ordered the EPA to make broad changes in its asbestos reporting requirements under the Chemical Data Reporting (CDR) rule.

Two cases were the basis for the decision: Asbestos Disease Awareness Organization v. Wheeler and California v. USEPA. The first case was brought by several nonprofit organizations, and the second was brought by several state attorneys general. "Each suit appealed EPA's denial of that group's citizens' petitions under TSCA section 21 asking EPA to amend the CDR or to adopt a new rule supplementing the CDR so as to collect additional information on asbestos assertedly needed for the still-ongoing risk evaluation for asbestos under TSCA section 6(b)," according to The National Law Review.

The court identified several "loopholes" in the EPA's current reporting "scheme," which included:

“(T)he asbestos-containing articles exemption,” which says that “(t)he importation of a chemical substance ‘as part of an article’ is not subject to reporting under the CDR rule.”

“(T)he impurities exemption,” which, under the Toxic Substances Control Act (TSCA), states that reporting under the CDR is not required “when a person manufactured a chemical substance in the manner described in 40 CFR 720.30(g) or (h). 40 CFR 711.10(c),” meaning substances that are manufactured or imported as impurities not used for commercial purposes are exempt from CDR reporting requirements.

“(T)he processors exemption, which, under the CDR, required only manufacturers to report.”

The court’s decision concluded that these loopholes prevent the EPA from receiving “reasonably available information.” In its ruling, the court ordered the EPA to make the following changes to what was characterized as information-gathering deficiencies:

Articles exemption. “The decision noted that EPA’s scope document for the asbestos risk evaluation omitted a number of articles known to contain asbestos,” including “cement products; clothing; compressed asbestos fiber jointing paper; millboard; felt; yarn and thread; cords and string; woven or knitted fabric; asbestos articles for use in civil aircraft; crocidolite footwear; accessories and headgear; asbestos paper; compressed asbestos fiber jointing in sheets or rolls; asbestos woven or knitted fabric; wallboard and floor tiles; window caulking; recycled asphalt shingle scrap; adhesive mastic; gaskets for motorcycles; and pads for ATVs and scooters.”

Impurities exemption. According to The National Law Review, “the citizens’ petitions had cited ‘several studies demonstrating the presence of asbestos contamination in makeup, crayons and other children’s toys made from talc (a mineral often found in deposits also containing asbestos) raising the possibility that thousands of asbestos-contaminated talc-based consumer products may be entering the US.’”

Processors exclusion. “The CDR requires reporting only by manufacturers. 40 CFR 711.8. The court declared that, ‘TSCA unambiguously requires processors to report their data to EPA.’ Section 8(a)(1) begins, ‘The Administrator shall promulgate rules under which – (A) each person ... who manufactures or processes ... shall submit to the Administrator such reports, as the Administrator may reasonably require....’ (Emphasis in the court decision.) The court found that EPA’s argument that it already captures all reasonably available information on processing from reporting by manufacturers (through the process and use section of the Form U and voluntary information submissions) ‘is not reasonable.’ The decision did not quote or address the section 8(a)(1) limitation, ‘as the Administrator shall reasonably require.’”

Naturally occurring substances exclusion. “The section 21 petitions had asked EPA to waive the exclusion for naturally occurring substances (NOCS) in 40 CFR 711.6(a)(3), since, as the court observed, ‘raw asbestos is a....

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### **Peer Reviewers Doubt Suitability Of Chloroprene Model To Revise IRIS Value**

Maria Hegstad, Inside TSCA

<https://insideepa.com/tsca-news/peer-reviewers-doubt-suitability-chloroprene-model-revise-iris-value>

Several EPA peer reviewers are urging agency officials not to use an industry model developed to help a chemical company’s push to ease EPA’s 2010 risk values for chloroprene, a chemical used to make rubber, with one reviewer saying model developers “ignored some of the available science and chose a simplistic approach.”

“My overall opinion is that it is NOT PRUDENT for the EPA to grant the requested 137X relaxation of the risk estimate in the IRIS risk assessment, at this time, to Ramboll/Denka based on the science presented for this Review, as well as on my own evaluation of some of the related state-of-the-science relevant to this Project,” Raymond S.H. Yang, an emeritus professor of toxicology and cancer biology at Colorado State University and one of EPA’s peer reviewers, wrote in the Jan. 5 peer review report.

Yang was among four of nine reviewers who stated EPA should not adopt the physiologically based pharmacokinetic (PBPK) model that Denka Performance Elastomers LLC hired Ramboll Environ consultants to develop.

The company argues the model should be used to inform -- and reduce -- the strict inhalation cancer risk estimate EPA set in its Integrated Risk Information System (IRIS) assessment, resulting in a recommended level to protect against lung cancer of 0.2 micrograms per cubic meter of air (ug/m3).

That risk estimate, combined with EPA's modeled National Air Toxics Assessment (NATA), led to controversy and concerns among EPA and Louisiana regulators over high predicted cancer risk in the vicinity of Denka's LaPlace, LA, chloroprene plant, and efforts to reduce its emissions.

Denka, however, has argued that despite significant spending on new emissions control equipment it cannot meet the standard set in the IRIS assessment. The company challenged the agency's IRIS assessment through a request for correction (RFC) under the Data Quality Act (DQA). EPA denied the request in January 2018, based on a systematic review that IRIS staff conducted, which concluded that no information published to that point materially changed the outcome of the IRIS assessment.

But after Denka in July 2018 submitted a request for reconsideration (RFR) of EPA's denial, top EPA risk assessors reached an agreement with the company's consultants to analyze and potentially advance to peer review a new PBPK model that could be used to revise the 2010 assessment.

Such models are generally used to project absorption, distribution, metabolism and excretion (ADME) of synthetic or natural chemical substances in humans and animal species and to compare species' internal doses in risk analyses. The agreement followed a July 2018 meeting between IRIS leaders, Denka's consultants at Ramboll, and Louisiana Department of Environmental Quality (LDEQ) officials.

EPA asked Versar, a contractor, to manage the peer review, meaning that while the nine experts Versar selected met last October to discuss EPA's charge questions, they did not produce a consensus report.

Instead, the report reflects each reviewer's comments, based on their own review of the model and the discussion with the other experts at the meeting. But with four of the nine recommending against incorporating the model in the IRIS assessment, it seems unlikely EPA would do so, particularly after the agency's initial denial of Denka's RFC was based on a systematic review IRIS conducted to explore whether research on chloroprene published since the 2010 IRIS assessment would alter its conclusions.

'Left Many Holes'

EPA last summer released the model for public comment and released an internal, draft July 2020 report from a trio of scientists with EPA's IRIS program outlining the model's history and explaining IRIS scientists' goals for the peer review.

"The Ramboll (2020) model, which was developed specifically for the estimation of internal doses associated with the most sensitive endpoint observed in rodents from inhalation exposure, lung tumors, has been submitted to the EPA as...

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### **Incoming Biden EPA Faces Tough TSCA Risk Management Choices In 2021**

Maria Hegstad, Inside TSCA

<https://insideepa.com/tsca-news/incoming-biden-epa-faces-tough-tsca-risk-management-choices-2021>

Incoming Biden officials face a looming test in EPA's implementation of the revised TSCA -- crafting its first risk management rules for the first 10 chemicals the Trump administration is slated to evaluate before leaving office, with industry and environmentalists already at loggerheads over the stringency over any future regulations.

Industry officials have long been pushing the agency to codify a narrow, "tailored" approach to writing any risk management rules while environmentalists are pushing officials to take speedy, short-term actions to reduce risks while also adopting strict long-term measures.

Some environmentalists add that EPA lacks the resources to implement and enforce the tailored regulatory approach industry favors, arguing that officials should instead adopt broad bans and other more-easily enforced strategies, though they also say that officials will have to ramp up enforcement regardless of which regulatory limits they impose.

So far, EPA has completed nine of its first 10 evaluations of existing chemicals since Congress rewrote the Toxic Substances Control Act (TSCA) in 2016, with the final assessment -- for pigment violet 29 -- expected before President-elect Joe Biden is inaugurated Jan. 20.

Each final evaluation has found some uses of the chemicals present unreasonable risk, triggering a one-year deadline to propose rules intended to mitigate that unreasonable risk and an additional year thereafter to finalize any proposals.

These first risk management rules are poised to trigger what Congress expected to be an ongoing process to prioritize, evaluate and as necessary, regulate the thousands of chemicals on the market that were largely unregulated by the original 1976 TSCA, which generally grandfathered these existing chemicals.

But Alex Dunn, the outgoing Trump EPA toxics chief, has been warning industry officials to brace for a “difficult process” as the Biden administration writes the rules and is urging them to provide early and extensive input.

“Addressing the unreasonable risks we’ve found in some chemicals is going to be a difficult process, and we know that we need input, expertise, and feedback from stakeholders now -- early in the process -- to help shape the path forward,” she told the Household & Consumer Products Association last month.

Dunn promised the trade group of downstream chemical processors and users that “[s]takeholders can expect transparent, proactive, and meaningful education, outreach, and engagement throughout the TSCA risk management process,” adding that EPA will provide “several opportunities” to gain this input, including public comment periods, webinars and required consultations with state and local governments, tribes, environmental justice communities, and small businesses.

Dunn and other EPA officials have touted their “tailored” approach to risk management under TSCA, generally risk management rules that are narrower than bans.

A case in point is the recently finalized rules governing five persistent bioaccumulative and toxic (PBT) chemicals the agency issued last month, which provided a host of critical use waivers that industry groups had sought.

Those rules will almost certainly draw lawsuits from environmentalists, which together with ongoing appellate litigation over EPA’s prohibition on consumer uses of paint strippers containing methylene chloride, will provide early legal markers for the agency’s regulatory authority.

### Competing Approaches

But even before any court rules on a TSCA risk management action, industry and environmentalists have been lobbying the agency for their preferred approaches.

Last June, five industry groups petitioned the agency to craft a framework rule to govern its risk management rule-writing process enshrining the tailored approach. EPA quietly rejected the petition, finding that TSCA does not provide authority for such a rule, though officials instead considered the request under the Administrative Procedure Act...

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### **EPA publishes PBT rules, starting clock for suits**

NA, Inside TSCA

<https://insideepa.com/tsca-takes/epa-publishes-pbt-rules-starting-clock-suits>

EPA has published its slate of five TSCA rules governing persistent, bioaccumulative and toxic (PBT) chemicals in the Jan. 6 Federal Register, starting a 60-day deadline for expected court challenges that could come from environmentalists and Democrats who see the rules as too lenient, or industry groups seeking further exemptions.

The five rules were crafted under a one-time expedited process that Congress created in the revised TSCA to address PBTs.

It allows EPA to skip the otherwise mandatory evaluation phase for regulating existing chemicals and instead directly craft risk-management rules of substances it designates as PBT.

Under the law, stakeholders have 60 days to challenge final actions including those risk-management rules, meaning court challenges can be filed until March 7.

The agency chose to regulate five PBT chemicals: phenol, isopropylated phosphate, or PIP (3:1), a flame retardant; decabromodiphenyl ether (DecaBDE), another flame retardant; 2,4,6-tris(tert-butyl)phenol (TTBP), used as an additive in fuels, oils and hydraulic fluid; Pentachlorothio-phenol (PCTP), used to make rubber more pliable in industrial uses, and in some consumer items like golf balls; and hexachlorobutadiene (HCBD), used as a solvent and in the manufacture of rubber compounds and lubricants.

While the rules generally ban the use, manufacture and sale of those chemicals, they also include several broad use exemptions, such as allowing use of TTBP in concentrations below 0.3 percent or in products sold in containers larger than 35 gallons -- intended to permit industrial uses to continue while banning sale of the chemical in fuel additives meant for use by consumers and small consumer firms.

That amounts to a rejection of environmentalists' requests for broad limits on PBTs with few if any exemptions and could prompt lawsuits from groups who say the agency is ignoring evidence of the chemicals' risks. "We strongly urge EPA to ban all uses of the five PBT chemicals, subject only to narrow and time-limited exceptions to the extent authorized by TSCA section 6(g)," environmental groups wrote in 2019 comments.

However, some industry groups and firms sought broader exemptions than what EPA ultimately granted and could sue over those decisions. For instance, the company Hempel sought a critical use exemption for use of PIP (3:1) in flame-retardant coatings that the final rule did not appear to address.

Environmentalists, meanwhile, argued that granting any critical use exemption without a new notice and comment period would be unlawful, and could challenge the agency's grant of one such petition from Fujifilm that sought to permit continued use of already-manufactured film made with PIP (3:1).

In a recent interview with Inside TSCA, former Obama toxics chief Steve Owens said the PBT rules, and any court challenges to them, could set an important precedent for all future risk-management rules under the reformed toxics law, in the form of an upper limit on how strict the agency is willing to be in its restrictions.

Since the law considers PBT chemicals to be the most dangerous to health and the environment, Owens said, establishing broad exemptions to restrictions on them implies that rules for less-dangerous chemicals will be even more lenient. "If this is what you're going to do with the worst of the worst, then what are you going to do with the others?"

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## **EPA releases final risk evaluation for perchloroethylene**

NA, Safety & Health

<https://www.safetyandhealthmagazine.com/articles/20701-epa-releases-final-risk-evaluation-for-perchloroethylene>

Washington — The chemical substance perchloroethylene poses unreasonable risk to workers under certain conditions, according to a final risk evaluation recently released by the Environmental Protection Agency, which is now compelled to propose within one year regulatory action to mitigate the chemical's hazards.



Frequently used in consumer products, perchloroethylene – also known as tetrachloroethylene or PCE – is the last of the first 10 chemicals to be evaluated for potential health and environmental risks under the Frank R. Lautenberg Chemical Safety for the 21st Century Act, as outlined in November 2016.

A 2017 study published in the journal BMJ Open found occupational exposure to PCE may increase women's risk of head and neck cancer. Additionally, EPA found that the chemical may be associated with neurological, kidney, liver and immunological effects.

Released by the agency Dec. 14 and announced via a notice published in the Dec. 18 Federal Register, the final evaluation states PCE poses unreasonable risk to workers involved in operations including:

- Paint and coating removal
- Adhesive and sealant processing
- Dry cleaning
- Vapor degreasing
- Pesticide, fertilizer and other agricultural chemical manufacturing
- Spot cleaning in textile processing
- Wood furniture manufacturing

EPA published a draft risk evaluation for PCE in the May 4 Federal Register. As required under the Toxic Substances Control Act, which the Lautenberg Act amended, the Science Advisory Committee on Chemicals hosted a virtual peer review of the document later that month. Comments on the draft risk evaluation were accepted until July 6.

TSCA requires EPA to address risks by proposing within one year regulatory actions such as training, certification, restricted access and/or ban of commercial use, and then accept public comment on any proposals.

"EPA is moving immediately to risk management for this chemical and will work as quickly as possible to propose and finalize actions to protect against the unreasonable risks," the agency states.

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### **Peshtigo Residents Reach \$17.5M Class Action Settlement With Tyco Over PFAS Contamination**

Danielle Kaeding, Wisconsin Public Radio

<https://www.wpr.org/peshtigo-residents-reach-17-5m-class-action-settlement-tyco-over-pfas-contamination>

Peshtigo residents have reached a \$17.5 million settlement with Tyco Fire Products and two other companies over widespread PFAS contamination stemming from the use of firefighting foam in the Peshtigo and Marinette areas.

The multi-million dollar settlement reached with Tyco, Chemguard and ChemDesign will compensate Peshtigo residents for exposure to PFAS in private drinking water wells, property damage and individual disease claims due to the use of Aqueous Film-Forming Foam (AFFF). A lawsuit was first filed in December 2018 by Peshtigo residents Joan and Richard Campbell.

An attorney for the Campbells estimates around 1,100 people would be covered under the settlement who reside in roughly 270 to 300 homes in the affected area. Community members with disease claims will receive \$2.5 million for anyone in the area who has been diagnosed with testicular cancer, kidney cancer, thyroid disease, ulcerative colitis, and preeclampsia.

Paul Napoli, an attorney with the firm Napoli Shkolnik, said the Campbells are happy with the agreement, calling it a landmark settlement.

"It's the first AFFF or firefighting foam settlement in the country that is going to deal with property damage, personal injury and medical monitoring expenses," said Napoli. "It's not full justice. While this class deals with those three issues, I

think there's another piece of the puzzle that needs to be solved. But, that needs to be solved by the town of Peshtigo and city of Marinette, and that's the connection to these people's private wells to public water."

Tyco has committed to paying for a new water line to provide a permanent source of clean drinking water to Peshtigo residents, which is still being discussed by city and town officials.

Napoli is one of the lead attorneys for plaintiffs in litigation nationwide that involves dozens of lawsuits alleging harm related to the use of PFAS-containing firefighting foam.

Attorney Rob Bilott with firm Taft Stettinius & Hollister also worked on the settlement as advisory counsel for the residents. Bilott gained fame after taking on DuPont chemical company for widespread PFAS contamination that resulted in a settlement that sparked one of the most significant studies into health issues related to the chemicals. His efforts were chronicled in the 2019 movie "Dark Waters" played by Kenosha native Mark Ruffalo.

"To be able to offer a settlement like this that provides, not only compensation for property damage caused by PFAS in AFFF, but compensation for human exposure to that PFAS in drinking water and for diseases previously linked by the independent C8 Science Panel to PFAS exposure is a huge milestone for those harmed by AFFF," said Bilott.

The settlement is still subject to a judge's approval. Once approved, a special administrator will be appointed to divide up the funds for distribution. If all goes well, Napoli said eligible residents could receive payments within six to eight months.

The companies have denied any wrongdoing under the settlement. Tyco is the focus of the state's largest, most complex investigation into PFAS contamination stemming from the company's Fire Technology Center (FTC) in Marinette and nearby sites.

"We recognize the burden that dealing with PFAS has put on the community, and this is an important part of our effort to make this situation right," said Katie McGinty, Tyco spokesperson in a press call. "We look forward to continuing to work with our neighbors now to actually clean up and remediate PFAS and restore clean and healthy water and soil."

McGinty said Tyco recently identified a permanent solution to ensure clean groundwater and surface water in the area. The company expects to submit a formal report to the Wisconsin Department of Natural Resources on plans for remediating contamination in the next two weeks. She said they hope to begin the permitting process on a groundwater treatment system by March and begin construction in May.

"It is an integrated plan that...

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#### **Fertilizer Institute adds BioStimulant Coalition members**

Spencer Chase, Agri-Pulse

<https://www.agri-pulse.com/articles/15072-fertilizer-institute-adds-biostimulant-coalition-members>

The trade association for the nation's fertilizer producers is adding a cache of members with a slightly different set of interests to its growing organization.

Members of the BioStimulant Coalition, a nonprofit coalition made up of parties interested in addressing legislative and regulatory issues for biological or naturally-derived additives, will officially join The Fertilizer Institute Monday, TFI CEO Corey Rosenbusch tells Agri-Pulse. The coalition, which currently boasts 20 members, included members focused on the production of substances like amino acids, seaweed extract, and other materials.

Rosenbusch, pictured above, tells Agri-Pulse many existing TFI members are already looking into biostimulants, making the move a good fit for the organization.

“We already have been working in this area ... fertilizer manufacturers are investing a lot in research and technology of that next generation of plant nutrients,” he said. “This was already part of our agenda.”

The move will also lead to the creation of a formalized council within TFI to allow specific focus for the involved companies within the organization’s policy agenda.

Rosenbusch said the familiarity with the policy issues will come in handy as TFI staff works on the biostimulants issue set, which is currently focused on achieving consistent regulatory treatment for its products by different federal agencies.

“Standard definitions still need to be adopted and accepted, more information needs to be provided to regulatory agencies, and I think the primary objective is to ensure biostimulants are really treated as a plant nutrition product and not a pesticide,” he said.

Specifically, TFI hopes to keep biostimulants – which Rosenbusch said are at “the nascent stages” of sales and use – from being regulated under the Federal Insecticide, Fungicide, and Rodenticide Act, the legislation governing other major crop inputs.

The addition of the Biostimulant Coalition members comes a few months after TFI merged with the Micronutrient Manufacturers Association in September.

For more news, go to [www.Agri-Pulse.com](http://www.Agri-Pulse.com).

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## **Residual Herbicides, Behavior Change Among Key Recommendations for Effective Weed Control in 2021**

Jackie Pucci, CropLife

<https://www.croplife.com/crop-inputs/residual-herbicides-behavior-change-among-key-recommendations-for-effective-weed-control-in-2021/>

In our interview on how retailers and growers should approach the 2021 season, Dane Bowers, U.S. Technical Product Lead for Herbicides at Syngenta, mentioned one of his take-home messages of the past several years: Managing resistance is less a technical problem than a human behavior problem.

“I think we have a pretty good idea on how to handle this from a technical standpoint. There are challenges — don’t get me wrong,” he acknowledged, “but we’re all creatures of habit. We tend to do the same thing if it works for us.”

We’d like to think 2021 will bring recovery in every sense of the word, but until then, it’s an excellent time to get down to the nitty-gritty of weed management. See just some weed escapes, but not too many? “That should be the canary in the coal mine,” Bowers advised. “Any time you see few escapes in-field, you should be thinking: have I used this program too long, have I not incorporated enough other sites of action into my herbicide program, and what could I do differently to avoid that? Typically, in the first year of a resistance scenario, you don’t really think you have a problem, then it gets worse in year two. By year three, it’s a disaster. It’s really about getting ahead of it.”

Atop Bowers’ list of recommendations for next season, and echoed by countless agronomists, is to: 1) Understand the unique challenges of any given farm, plus the driver weeds, and 2) Understand the need to start clean and stay clean. This means deploying a strong preemergence residual herbicide followed 14 to 21 days later by an overlapping residual, always incorporating multiple effective sites of action to reduce risk of resistant weeds going to seed.

“The most important part and often times the hardest part is actually sticking to that plan as prices and environmental conditions will discourage us from making the right decisions,” Drake Copeland, FMC Technical Service Manager for Michigan, Ohio, and Indiana pointed out.

Ryan Wolf, Agronomy Services Manager with WinField United, agreed.

"I think a good residual program with multiple modes of action should be one of your No. 1 choices when you're thinking about herbicides," Wolf said. "You saw that really plain as you went down the road in August and early September in the West. The people that had residuals down and added more residuals in-season, their fields looked pretty good with very little waterhemp sticking up. The people that skipped a bit on residuals, there was definitely a lot of waterhemp showing up in late summer and early fall in Minnesota, Iowa, and the Dakotas."

#### Dicamba, Residuals

Bowers stressed how critical the use of a preemergence herbicide is with dicamba products, notably in light of the first identification of dicamba-resistant Palmer by Dr. Larry Steckel at the University of Tennessee (UT).

Steckel, on his UT blog, wrote that looking forward to 2021, a pre-applied residual that is effective on Palmer is now a necessity. Moreover, timely applications of Liberty must be used shortly after a dicamba application to remove escapes.

This is the fifth herbicide mode of action to which Palmer has become resistant since 1994 in Tennessee, Steckel noted. "If we take that 26-year period and divide by five modes of action the math would indicate that weed will evolve resistance to an effective herbicide in just 5.2 years of widespread use."

In Syngenta's portfolio, its Tavium Plus VaporGrip Technology dicamba premix contains S-metolachlor, providing three more weeks of residual activity than dicamba alone. When applied post-emergence in a program with a preemergence herbicide, such as Boundary 6.5 EC, BroadAxe XC or Prefix herbicides, "it provides the best chance of a one-pass post-emergence herbicide application in soybeans," according to the company.

New from Nufarm is Panther MTZ herbicide, offering dual burndown and residual modes of action.

"It's a really strong product to set up weed control ahead of soybeans, regardless of...

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#### **Biden EPA nominee plays to agriculture crowd**

Marc Heller, E&E News

<https://www.eenews.net/greenwire/2021/01/06/stories/1063721931>

The incoming Biden administration's prospective EPA administrator, Michael Regan, held an online discussion yesterday with agriculture groups, long a source of antagonism with the environmental agency.

Regan, the top environmental official in North Carolina, emphasized his background in farming, including that his grandfather farmed peanuts, soybeans, corn and tobacco in the state, according to a readout of the meeting from the Biden transition office.

Sixteen groups representing commodities, farm chemicals and other interests participated. The roughly hourlong virtual meeting was mainly a chance for introductions, although groups involved said they raised issues such as ensuring that science guides EPA actions and that the agency considers agriculture's priorities in making major decisions, such as a replacement for the "Waters of the U.S." regulations under the Clean Water Act, involving runoff into waterways on and near farms.

"An emphasis of sound science was stressed as well as support for crop protection tools and the current WOTUS rule," said Chandler Goule, executive director of the National Association of Wheat Growers, through a spokeswoman.

"Secretary Regan said he will always have an open-door policy for agriculture."

If confirmed by the Senate, Regan will arrive at an agency that's been moving toward softer regulation of agriculture during the Trump administration, including scaling back the clean water rules. EPA has also proved more inclined to

approve certain pesticides and will face pressure from environmental and health groups to limit them based on human health and other concerns.

As with other federal agencies, the Biden EPA is likely to have a greater emphasis on climate change, which could affect carbon sequestration and emissions tied to agriculture. The trade group representing pesticide makers, CropLife America, noted the issue in a statement from its president and CEO, Chris Novak, who participated.

"Agriculture needs to be part of the global climate solution, and yesterday's meeting provided us the opportunity to share our commitment to work with the Biden Administration in developing new programs and policies to address this challenge," Novak said.

While the meeting didn't provide an opportunity for in-depth discussions, CropLife's priorities include making sure EPA had adequate staff and funding to meet deadlines for pesticide registration decisions, defends the work of career scientists on pesticide reviews and "continues to improve" pesticide-related reviews under the Endangered Species Act, he said.

Major farm groups such as the American Farm Bureau Federation, American Soybean Association, Fertilizer Institute and National Pork Producers Council were represented, as were the Biotechnology Innovation Organization and the National Association of State Departments of Agriculture.

In its news release, the transition office said Regan "reiterated President-elect Joe Biden's commitment to working with agricultural leaders to promote healthy and secure food supplies, clean air, and clean water." He was joined by Cedric Richmond, incoming senior adviser to the president and director of the White House Office of Public Engagement.

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## **6 STEPS TO HALT HERBICIDE-RESISTANT WEEDS**

Gil Gullickson, Successful Farming

<https://www.agriculture.com/crops/6-steps-to-halt-herbicide-resistant-weeds>

Two years ago, Bruce Stripling sat in FMC's booth at the Commodity Classic trade show, viewing companies pitching the latest agricultural technology.

"All this technology, and here we are, still pulling pigweeds," says the regional technical service manager for FMC.

Stripling hails from Georgia, where Palmer amaranth started to devastate soybean and cotton fields in the mid-2000s. At that time, glyphosate-tolerant Roundup Ready technology still worked well in the Midwest.

Before Roundup Ready, Georgia farmers managed weeds in cotton and soybeans with a mix of tillage and overlapping residual herbicides.

"Roundup Ready was one of the biggest technologies since the Green Revolution, but it did have one bad side effect," says Stripling. "It made us lazy."

Bit by bit, weeds like glyphosate-resistant Palmer amaranth and marehail escaped. Georgia farmers dealt with it by a mix of tillage, overlapping residual herbicides, and postemergence herbicides used in other herbicide-tolerant systems. In extreme cases, they hired weeding crews who pulled Palmer amaranth plants and loaded them in a wagon to destroy outside the field. (Palmer amaranth can reroot itself if tossed aside.)

## **PAGING JIMMY DURANTE**

In a sense, herbicide resistance is akin to the trademark line of the late comedian Jimmy Durante: "Everybody wants ta get inta da act!"

Following this situation faced by Georgia farmers, Midwestern farmers soon struggled with glyphosate-resistant weeds. "Mother Nature always wins," says Stripling.

That's a point to consider when forming weed management plans for 2021 and beyond. Farmers have a host of preemergence and postemergence herbicide options to consider. Still, using the same herbicide strategy year after year will trigger what happened with glyphosate-resistant weeds.

"We now have [herbicide-tolerant postemergence] dicamba, glufosinate, and 2,4-D-choline technologies," he says. A key to keeping these technologies effective involves steps like including overlapping residual herbicides in tank mixes, he adds.

"Without such steps, we will see them fall to the same circumstances that eroded glyphosate in past applications," says Stripling. "Whatever comes in the marketplace will not last forever."

## WHAT TO DO

Here's a list of recommendations on how farmers can forestall herbicide resistance with those technologies and improve weed control.

### 1. DON'T USE JUST ONE HERBICIDE PROGRAM.

So far, the only weed that resists glufosinate – used in several postemergence herbicide-tolerant systems – is Italian ryegrass that surfaced in Oregon and California orchards and vineyards. That doesn't mean glufosinate is immune to resistance in row-crop production, says Mark Storr, BASF technical services representative.

"Certainly, we don't want to use Liberty [glufosinate] followed by Liberty followed by Liberty," he says. Instead, farmers should aim to apply such products in tank mixes incorporating different effective herbicide sites of action and also use preemergence chemistry, he adds.

### 2. NIX EARLY-EMERGING WEEDS WITH PREEMERGENCE HERBICIDES.

Ever get a bit grumpy when you get a fertilizer bill? This minor annoyance could morph into ear-steaming anger at the thought of 1- to 2-inch-high weeds consuming up to 9 pounds per acre of nitrogen.

"This also reaches into other nutrients, like P and K and micronutrients," says Mark Kitt, Syngenta herbicide technical product lead. Ditto for the inch of water that 3-inch-high weeds can remove from the soil in three days, he adds. "It's important to use broad-spectrum preemergence residual herbicides to control weeds before they emerge," he says.

"One of the best recommendations is the old adage of start clean, stay clean," says Randy Niver, a DeKalb/Asgrow agronomist. "Let's think about adding one more phrase: 'Start clean, spray clean, stay clean.' If we can overlap residual herbicides, we can keep weeds from emerging and never see a weed in the field..."

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## Pesticides and Road Salt: A Toxic Mixture for Aquatic Communities

NA, Beyond Pesticides

<https://beyondpesticides.org/dailynewsblog/2021/01/pesticides-and-road-salt-a-toxic-mixture-among-aquatic-communities/>

Insecticides and road salts adversely interact to alter aquatic ecosystems, reducing organism abundance and size, according to a study in the journal *Environmental Pollution*. Pesticide use is ubiquitous, and contamination in rivers and streams is historically commonplace, containing at least one or more different chemicals. Although road salts can prevent hazardous ice formation during the colder months, the study raises critical issues regarding the adverse interaction between road salts and pervasive environmental pollutants that threaten human, animal, and environmental health and safety. Authors of the study note, "Our results highlight the importance of multiple-stressor research under natural conditions. As human activities continue to imperil freshwater systems, it is vital to move beyond single-stressor experiments that exclude potentially interactive effects of chemical contaminants."

To assess the impact of road salts and insecticides on aquatic communities, researchers created a mesocosm (controlled outdoor experimental area) to examine the natural environment under controlled conditions. These communities include zooplankton, phytoplankton, periphyton, and leopard frog (*Rana pipiens*) tadpoles. Researchers performed a toxicity evaluation of six insecticides from three chemical classes (neonicotinoids: thiamethoxam, imidacloprid; organophosphates: chlorpyrifos, malathion; pyrethroids: cypermethrin, permethrin). Additionally, researchers note the potentially interactive effects of these insecticides with three concentrations of road salt (NaCl).

Researchers find that differing pesticide classes directly impact aquatic communities, and exposure to insecticides indirectly alters the food web in freshwater communities. Exposure to organophosphate decreases zooplankton abundance, elevates phytoplankton biomass, and reduces tadpole size. Neonicotinoid and pyrethroid exposure reduce zooplankton abundance, with little to no significant impact on phytoplankton abundance or tadpole size. Although the study demonstrates organophosphates decrease zooplankton abundance at all salt concentration levels, the effect on phytoplankton abundance and tadpole size depends upon salt levels. Pyrethroids, on the other hand, reduce zooplankton and phytoplankton density as salt concentrations increase.

Aquatic ecosystems are highly sensitive and complex environments. Contaminants, like pesticides, have devastating effects on the ecosystem, including non-target organisms. Furthermore, aquatic ecosystems suffer more frequent, simultaneous exposure to multiple chemical stressors. Often, these various chemical stressors work together or synergize to produce a greater, combined effect. Synergism is a common issue among pesticide mixtures and can underestimate the toxic impacts on human, animal, and environmental health. Moreover, some pesticides, like the weed killer 2,4-D, have common usages on roadsides to control aquatic weeds, and mixtures of road salt and chemicals can run off into nearby water sources. Considering that the use and production of synthetic chemicals like pesticides outpace others, it is essential to understand how exposure to multiple environmental contaminants simultaneously affects normal ecosystem function.

Although pesticides and road salts individually impact aquatic communities, this study is the first to demonstrate their interactive effects. Understanding whether these interactions cause an additive, antagonistic, or synergistic effect on natural communities is necessary, especially given insecticides and road salts are commonplace in northern temperate locations. Not only do pesticides interact with NaCl (sodium chloride) road salts, but potentially other chemical salt compounds that are highly corrosive and toxic to aquatic organisms. Moreover, some road salts contain additives like sodium hexacyanoferrate(II) and sugar, and their interactive effects with pesticides lack proper research. The authors of the...

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### **Viewpoint: Glyphosate and cancer—How ideology and bad science turned a safe herbicide into a carcinogen**

Marcel Kuntz, Genetic Literacy Project

<https://geneticliteracyproject.org/2021/01/07/viewpoint-glyphosate-and-cancer-how-ideology-and-bad-science-turned-a-safe-herbicide-into-a-carcinogen/>

Glyphosate has long been considered as an herbicide with no unacceptable health risk. In 2015, its classification as “probably carcinogenic” by the International Agency for Research on Cancer (IARC) changed the situation, and in 2017 the European Union renewed its authorization for only five years with France even wanting to “get out of glyphosate” in three years time. However, other official risk assessment agencies have contradicted the IARC’s opinion and, as our study attempts to show, this discrepancy is not scientifically explainable.

On the other hand, the IARC has a clear lack of ideological neutrality and some IARC experts have financial ties with lawyers exploiting the tort law in the United States based on the IARC’s opinion on glyphosate.

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The lawsuits against Bayer in the United States confirm the perversity of a system where profiteers of tortious liability in common law instigate lawsuits by recruiting patients by advertising, taking 30 to 40% of the indemnities allocated by justice. A \$11 billion deal was offered to end the glyphosate litigation.

The IARC's opinion played a large role in triggering legal procedures, despite the fact that it was contradicted by the other agencies.... However, as shown by the bans and restrictions on the use of glyphosate around the world, it is as if a single alarmist opinion prevails .... politically and judicially over a series of reassuring opinions. The conditions under which the IARC establishes its classification and chooses its experts, their possible financial or ideological interest would warrant a thorough public inquiry.

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### **New Year, New EPA: How the Biden Administration Can Catalyze PFAS Action in 2021**

GENNA REED, Union of Concerned Scientists

<https://blog.ucsusa.org/genna-reed/new-year-new-epa-how-the-biden-administration-can-catalyze-pfas-action-in-2021>

During the past four years, awareness about per- and poly-fluoroalkyl substances (PFAS) has been heightened, but not because of notable government successes. Instead, communities across the country have worked with scientists, legal teams, nonprofit organizations, members of Congress, and even film production companies to raise awareness about the need for remedies. With their leadership, there has been progress made, with dozens of pieces of PFAS legislation introduced and the passage of PFAS provisions in the 2020 and 2021 defense authorization bills, but there's much more work to do to help us understand the extent of the PFAS public health threat, limit current PFAS pollution, and require polluters to pay for cleanup of legacy contamination.

On its transition webpage, as a part of its environmental justice plan, the Biden team committed to "tackle PFAS pollution by designating PFAS as a hazardous substance, setting enforceable limits for PFAS in the Safe Drinking Water Act, prioritizing substitutes through procurement, and accelerating toxicity studies and research on PFAS." This is a good start, but there's much more that could be done to address this national public health threat, which is even more urgent in the face of a pandemic because of recent revelations of potential complications with vaccine response and immunity to COVID-19. As Brian Regan, Biden's nominee for EPA and former North Carolina Department of Environmental Quality chief knows well, this issue is complex and the stakes are very high, which makes action urgent. The good news is that organizers in communities across the country have already laid out where the needs are greatest—it's just a matter of listening and working with people on the ground to respond appropriately.

The Biden administration should:

Designate PFAS as a hazardous substance and hold polluters accountable

Time and time again, when faced with cleanup decisions, the Department of Defense and other legacy polluters have been able to punt on cleaning up sites with PFAS because the class of chemicals is not listed as a hazardous substance under EPA's Superfund law, the Comprehensive and Environmental Response, Compensation, and Liability Act (CERCLA). This has meant that communities near these sites have been left to pay for testing and water filtration rather than putting that burden squarely on the responsible parties as should be the case. EPA has the data it needs to support this designation, since there is adequate evidence that they "may present substantial danger to public health or welfare or the environment."

Create more opportunities for meaningful input from impacted communities

PFAS exposure is an environmental justice issue. In order to build trust with exposed communities and work to reverse inequities, the EPA head should meet, interact, and engage with community members more often and provide community members with greater access to agency staff, helping ensure that voices of underserved community members are heard and not perceived as less valuable than the input of other stakeholders. Specific measures include but are not limited to outreach to communities in providing information about a proposal, using appropriate means of communication, soliciting public comments, and creating a set of best practices for ensuring that communities have their views adequately presented and fully considered.



Further, EPA should halt unsafe practices of disposal of PFAS, like incineration, until the agency can prove that it is safe for communities nearby, which are often located in low-income communities and communities of color. A recent EPA guidance on methods of disposal and destruction of PFAS did not instill confidence that the standard operations are safe for frontline communities.

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